



4. On August 6, 2010, the Objectors appealed the Decision to the Court of Common Pleas of Fayette County.

5. On July 24, 2014, the Honorable Judge Steve P. Leskinen issued an Opinion and Order (“Opinion”) affirming the Decision, in part, and further remanding the matter back to the Board for the very limited purpose of allowing the Objectors the opportunity to present evidence and testimony concerning whether the imposition of any additional conditions would be appropriate. The Court ordered, in pertinent part:

[T]he only just and appropriate result is to remand the within matter to the Zoning Hearing Board *to allow [Objectors]* to resume the hearing that terminated on May 26, 2010, and to *allow them time to present any evidence in favor of conditions* that should be attached to any approval of the applied for special exception...[C]onditions can only be imposed on evidence in this case, and *there may or may not be any such evidence* after the remanded hearing or hearings conclude...[T]he within matter is hereby remanded to the Zoning Hearing Board for further proceedings not inconsistent with this decision

Opinion at 12-13.

6. On April 22, 2015, after several continuances at the bequest of the Objectors, the Board held a public hearing pursuant to the Court’s Opinion (“Second Hearing”).

7. At the outset of the Second Hearing, the Mountain Watershed Association (“MWA”) attempted to enter its appearance as a party in opposition to the Application. The Board voted not to permit the MWA to enter its appearance, holding that the scope of the remand order limited party participation in the hearing solely to the Bezjaks.<sup>1</sup>

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<sup>1</sup>On May 21, 2015, MWA filed a Motion for Special Relief with the Court of Common Pleas of Fayette County and requested that the Court order the Board to grant MWA party status in the remanded proceedings. On June 23, 2015, the Court denied MWA’s motion, holding that “MWA did not appear at the initial ZHB hearing, and did not appear at the appeal argued before this court that followed. As a result, this Court’s remand was specifically tailored to address only the parties and only the concerns that were raised in the first appeal.”

8. The Objectors' counsel then requested a continuance because the Objectors were not prepared to present evidence in favor of any possible conditions.

9. The Board requested that the Objectors proceed with any evidence they had available. Limited testimony was introduced by the Objectors. At the end of the Second Hearing, the Board advised the parties to return to the next hearing with credible evidence regarding noise and health effects of the Springhill Compressor Station.

10. By letter dated March 19, 2015, Laurel Mountain notified the Fayette County Planning, Zoning & Community Development Office ("Planning Department") that it planned to replace certain equipment at the Springhill Compressor Station. The equipment upgrades were performed between June and September of 2015. *See* Ex. K.

11. On April 13, 2016, the Board held a third hearing on the Application ("Third Hearing"). Due to time limitations, the Objectors were not able to conclude their testimony and the hearing was again continued.

12. On May 25, 2016, the Board held a final hearing on the Application ("Fourth Hearing"). At the Fourth Hearing, the Objectors concluded their testimony and Laurel Mountain presented its rebuttal case.

13. At the conclusion of the Fourth Hearing, the Board voted to close the hearing and to render their written decision within 45 days, as is permitted by the Municipalities Planning Code. *See* 53 P.S. § 10908(9).

## **II. The Testimony And Evidence In Support Of Additional Conditions**

14. At the remanded public hearings, the Objectors presented their case through the testimony of Stanley Burns, James Rosenberg, William Thornton of Thornton Acoustics & Vibrations, Sharon Wilson of Earthworks' Oil and Gas Accountability Project,

Joseph Bezjak, Phyllis Carr, Jerry Yeager, John Ryczek, David Headley, Marigrace Butela, and several other Fayette County residents; and submitted the following evidence in support of additional conditions to approval:

- Compressor Station Springhill #2 Air Quality Permitting Timeline (Ex. 1);
- Information Packet Regarding Toluene and FLIR Imaging (Ex. 2);
- Laurel Mountain Midstream Operating, LLC., - Springhill #2 Compressor Station Noise Evaluation (Ex. 3);
- Partial Plan of Survey (Ex. 4);
- EPA Air Compliance Inspection Report for November 10, 2015 (Ex. 5);
- Appraisal Report for 113 Fallen Timbers Road (Ex. 6);
- Information Packet Submitted by Marigrace Butela (Ex. 7).
- FLIR Video (Ex. 8).

15. At the Second Hearing, Stanley Burns testified regarding the noise created by the Springhill Compressor Station. He testified that his home is located approximately a half a mile from the Springhill Compressor station and that he can hear an audible rumbling on his property. Mr. Burns provided an iPhone video that purported to contain noise from the Springhill Compressor Station. At the conclusion of the First Hearing, the Board directed both parties to present credible evidence regarding noise.

16. At the Third Hearing, the Objectors presented the testimony of William Thornton, who testified regarding noise created by the Springhill Compressor Station. Mr. Thornton testified that he performed a sound reading on the Bezjak property approximately twenty-five (25) feet from the property line. Mr. Thornton testified that, over an hour long period, he measured an average reading of 59 dB(A) (A-weighted).

17. Mr. Thornton confirmed that his noise level measurement was in compliance with Section 1000-503 of the Fayette County Zoning Ordinance (“Zoning Ordinance”), which provides for a maximum reading of 90 dB(A) at distance of twenty-five (25) feet from the property line.

18. James Rosenberg, 555 Davidson Rd., Grindstone, PA 15442, testified mostly to the Springhill Compressor Station’s environmental permitting history. He presented evidence from a file review at the Pennsylvania Department of Environmental Protection (“DEP”), which indicated that, in 2013, emissions from the Springhill Compressor Station were in excess of 5 tons per year.

19. Upon further review, Laurel Mountain later determined that the toluene levels reported to the DEP and presented by Mr. Rosenberg were the result of a clerical data entry error. *See* Ex. A. Correctly calculated, the toluene emissions were estimated at 0.5 tons per year, rather than the 5.05 tons per year that were initially reported and cited by Mr. Rosenberg at the Second Hearing. A letter was sent by Laurel Mountain to the DEP in order to fix the reporting error. *Id*

20. Mr. Rosenberg also testified to and presented video footage of the Springhill Compressor Station taken by a forward looking infrared (“FLIR”) thermal imaging camera. *See* Ex. 8. The footage purported to show emissions leaving the Subject Property.

21. Mr. Rosenberg could not credibly testify as to the authenticity of the FLIR video or to what was contained in the emissions it purported to show. Mr. Rosenberg has no experience in the natural gas industry, is not a professional engineer, is not a certified hydrologist, is not a certified toxicologist, is not a health scientist, is not medical doctor and is not a certified industrial hygienist.

22. At the Fourth Hearing, Sharon Wilson, the cameraperson who recorded the FLIR video, was made available via telephone to authenticate the FLIR video and to answer questions regarding its content.

23. Ms. Wilson stated that she could not testify with certainty which hazardous materials, if any, were contained in the emissions shown in the FLIR video. When asked whether it was possible that the emissions shown contained nothing more than heat and steam, she replied that was a possibility.

24. Phyllis Carr, 518 Hope Hollow Rd., Lake Lynn, PA 15451, testified that emissions from the Springhill Compressor Station have caused illness to herself and her family members. Ms. Carr declined to state what illness the emissions had caused and did not provide any documentation to support her claims.

25. Jerry Yeager, 146 Honor Roll Rd. Uniontown, PA 15401, testified that he believes that the Springhill Compressor Station has caused him to have eye irritation and itchy skin. He did not provide any documentation to support his claims.

26. John Ryczek, 75 Morgantown St., Uniontown, PA 15401, testified that the presence of the Springhill Compressor Station has reduced the value his property. He presented an appraisal, which stated that the presence of a gas well approximately 2,000 feet from his home might “effect [sic] certain buyers that are looking for a quiet rural location.” *See* Ex. 6. The appraisal does not reference or otherwise analyze the Springhill Compressor Station.

27. David Headley, 132 Volek Rd., Smithfield, PA 15478, testified that he owns a vacant residential property near the Springhill Compressor Station. He stated that he is unable to sell the property because of the presence of the Springhill Compressor Station.

However, he further testified that he has never attempted to actually put his property on the market.

28. Marigrace Butela, 1601 W. Crawford Ave., Connellsville, testified that she had personally witnessed illnesses she believed to be caused by the Springhill Compressor Station to the Carr family. She further testified that she has not received any type of medical or health related certifications.

29. Several other Fayette County residents provided comments in general opposition to the Application that consisted of nothing more than personal opinions and generalized grievances.

### **III. The Testimony And Evidence In Support Of The Application**

30. At the remanded public hearings for the Application, Laurel Mountain presented its case through Taylor James, Operations Supervisor for Laurel Mountain and Lindsay Sumpter, Environmental Specialist for the Williams Companies; and submitted the following evidence in support of the Application:

- Letter from Williams to Pennsylvania DEP dated May 19, 2016 (Ex. A);
- Photographs of the Springhill Compressor Station (Ex. B);
- Current Photographs of the Springhill Compressor Station (Ex. C);
- Noise Survey of Original Engines (Ex. D);
- Noise Study Conducted by ATCO dated February 3, 2016 (Ex. E);
- Storage Box Application (Ex. F);
- Municipal Notifications (Ex. G);
- DEP & Williams Air Analyses (Ex. H);
- DEP Air Quality Permit (Ex. I);

- MSDS Sheets & Photographs (Ex. J);
- Miscellaneous Correspondence Regarding the Application (Ex. K);
- EPA Response Letter (Ex. L);
- Google Earth Aerial Photograph of the Springhill Compressor Station and Surrounding Area (Ex. M);

31. Mr. James testified that Laurel Mountain acquired the Springhill Compressor Station from Atlas Pipeline Pennsylvania, LLC (“Atlas”). The Springhill Compressor Station had been constructed by Atlas around 2005. At the time Laurel Mountain acquired the Springhill Compressor Station, Atlas represented that all of its assets were properly permitted.

32. After notification from Fayette County that zoning approval was required for the Springhill Compressor Station and that Atlas had never applied for or received the same, Laurel Mountain filed the Application in order to become compliant with the Zoning Ordinance.

33. Mr. James testified that there had been some modifications to the Springhill Compressor Station since the Board’s initial approval in 2010. Laurel Mountain recently completed equipment modifications at the facility, replacing two of the three engine/compressor packages, installing a new dehydrator, and installing new building ventilation. The County was notified on each occasion that a modification was performed. *See* Ex. G.

34. Laurel Mountain presented two noise studies. The first study was performed on February 24, 2015, prior to the replacement of two of the compressor engines and ventilation modifications that allow the station to operate with all of its doors closed. *See* Ex. D. At 25 feet from the fence line of the station, the first survey observed a minimum reading of 56



dB(A) and a maximum reading of 70 dB(A), both of which were well below the Zoning Ordinance's maximum allowable level of 90 dB(A). *Id.*

35. The second noise study was performed by ATCO Emissions Management ("ATCO"). *See* Ex. E. ATCO performed noise measurements on June 2-3, 2015, prior to the installation of the new engines, dehydrator, and ventilation system and also performed measurements on October 21-22, 2015, after the modifications were made. *Id.* at 1.

36. Laurel Mountain directed ATCO to perform noise measurements both at 25 feet from the Springhill Compressor Station property line (as provided for in the Zoning Ordinance) and at the residence of Stanley Burns, who resides approximately 0.4 miles away from the Springhill Compressor Station. Laurel Mountain was not required to perform the noise measurements at Mr. Burns' residence.

37. The ATCO noise survey concluded that the measurements taken at 25 feet from the Springhill Compressor Station property line were all significantly below the 90 dB(A) limit contained in Section 1000-503 of the Zoning Ordinance. *Id.* at 12. It further concluded that the majority of the measurements taken showed a decrease in noise levels after the equipment modifications were installed.

38. The survey showed that the noise levels at Mr. Burns' residence effectively decreased from 38 dB(A) in the June 2015 survey to 34 dB(A) in the October 2015 survey, after the equipment modifications had been performed.

39. While the majority of the noise measurements at the Springhill Compressor Station decreased between the June 2015 survey and the October 2015 survey, a couple of readings showed a slight increase. Mr. James testified that this was due to the

temporary removal of a sound wall. He testified the sound wall would be in place in the near future, which would result in even further noise reduction.

40. Mr. James explained that the new engines do not stall as frequently as the original engines and therefore require significantly less restarts. In addition, Laurel Mountain has installed state-of-the-art starter silencers that muffle the starter in the event that a restart is required.

41. Mr. James testified that Laurel Mountain has properly obtained all necessary permits from state and federal regulatory authorities. The air emissions are currently covered by DEP Permit No. GP5-26-00587D. *See* Ex. I. Since Laurel Mountain assumed ownership of the facility, the Springhill Compressor Station has not been cited for any state or federal environmental violations.

#### **PROPOSED CONCLUSIONS OF LAW**

1. The purpose of the remanded hearing was to allow the Objectors with the opportunity to present evidence and testimony to justify imposing additional conditions upon the Decision to approve the Springhill Compressor Station.

2. Under Sections 603(c)(1) and 912.1 of the Pennsylvania Municipalities Planning Code (“MPC”), a zoning hearing board has the statutory authority to attach “reasonable conditions” based on the “evidence in the record.” *See* 53 P.S. § 10603(c)(1); 53 P.S. §10912.1; *Coal Gas Recovery, L.P. v. Franklin Township Zoning Hearing Board*, 944 A.2d 832 (Pa. Cmwlth. 2008) (holding that the imposition of conditions when there is no evidence in the record to support the conditions is manifestly unreasonable and an abuse of discretion); Ryan, *Pennsylvania Zoning Law and Practice* §9.4.19 (reasonable conditions are those that advance a valid zoning interest and are supported by the evidence of record).

3. In order for a condition to be “reasonable,” it must relate to a standard adopted in a zoning ordinance. *See Hill v. Zoning Hearing Board of Maxatawny Twp.*, 597 A.2d 1245 (Pa. Cmwlth. 1991) (a zoning board has the power to impose conditions only “if the conditions reflect the subject matter and content of an ordinance duly enacted by the governing body of the municipality”); Ryan, *Pennsylvania Zoning Law and Practice* §9.4.18 (the imposition of conditions which do not relate to matters specifically regulated by the ordinance and exceed the requirements of the ordinance constitute an invasion of the legislative function, and generally are invalid).

4. In applying the principles of preemption, Pennsylvania courts have consistently held that environmental statutes and regulations preempt local zoning that attempts to address the operational aspects of a land use, which are within a federal or state regulatory agency’s purview under the various environmental statutes and regulations. *See State College Borough Water Authority vs. Bd. of Supervisors of Halfmoon Township*, 659 A.2d 640 (Pa. Cmwlth. 1995); *Clinton County*, 643 A.2d at 1169. *Clinton County Solid Waste Authority v. Wayne Twp.*, 643 A.2d 1162, 1169 (Pa. Cmwlth. 1994) (conditions are not reasonable if inconsistent with state environmental laws and regulations).

5. The Board finds that both the Objectors and Laurel Mountain presented credible evidence that the Springhill Compressor Station, without any further mitigation measures, operates in compliance with Section 1000-503 of the Zoning Ordinance.

6. The Board finds that the Objectors’ witnesses who provided testimony in opposition to the Application failed to present any specific credible evidence that would warrant imposing additional conditions upon the Decision.

7. The Board finds the comments regarding health concerns to be of little weight, given that they consisted mostly of bald assertions without any credible evidence that would have linked the Springhill Compressor Station to the concerns that were raised. No medical doctor or expert testified as to whether the emissions from the Springhill Compressor Station could cause the medical problems complained of, let alone directly linking the Springhill Compressor Station's emissions to the concerns of any of the witnesses who testified at the hearings.

8. The Board finds that the potential encroachment of a fence for a pipeline appurtenance on Joseph Bezjak's adjacent property to be entirely irrelevant. Said dispute does not involve either the facility or the property at issue.

9. The Board finds that the regulation of air emissions at the Springhill Compressor Station is preempted by state and federal law. Responsibility for regulation of air emissions rests solely with the DEP and EPA. It is not within the Board's power to impose additional restrictions on air emissions or require additional reporting to the County. Moreover, even if it could require additional reporting, the County does not employ the requisite expert professionals to evaluate any such reports.

10. The Board finds that the testimony of Taylor James and Lindsay Sumpter was credible and that they adequately addressed noise, health and safety concerns raised by resident witnesses.

11. The Board takes notice of the Commonwealth Court's decision in *Pennsylvania Env'tl. Def. Found. v. Com.*, 108 A.3d 140, 156 (Pa. Commw. Ct. 2015), which confirmed that the Pennsylvania Supreme Court's plurality's reasoning in *Robinson Twp. v. Commonwealth*, 83 A.3d 901 (Pa. 2013), regarding Article I, Section 27 of the Pennsylvania

Constitution is not binding upon lower courts. As such, the decision in *Robinson* imposes no additional burden on this Board in evaluating the need for additional conditions.

**PROPOSED CONDITIONS**

Decision: Laurel Mountain Midstream Operating, LLC's request for special exception approval under Zoning Ordinance Section 1000-858 is hereby approved subject to the following conditions:

1. The approval is subject to all conditions contained in Resolution 10-20, issued by this Board on July 2, 2010.
2. Laurel Mountain shall reinstall the sound wall.
3. Laurel Mountain shall coordinate with the local first responders to conduct a site visit and emergency drill.
4. Laurel Mountain shall provide neighboring property owners with advance notification of all emergency drills.

Respectfully submitted,

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